

Defendant.

**PLAINTIFF, B.S. INGERSOLL, LLC’S MOTION TO FILE SUR-REPLY IN
OPPOSITION TO DEFENDANT, GREAT AMERICAN INSURANCE COMPANY’S,
REPLY IN SUPPORT OF ITS RULE 12(b)(6) MOTION TO DISMISS**

4870-6153-2776 v1

the March 7, 2023, Order. Whether done intentionally or not, Ingersoll seeks to use the Sur-Reply to correct and counter the statements made by GAIC in the Reply in order for the arguments and assertions made in the Opposition to be undisputable. Namely, that: (i) Ingersoll sufficiently alleged both waiver and estoppel; (ii) GAIC confuses alleging waiver and estoppel with proving estoppel and waiver; (iii) GAIC's waiver argument is not supported by the Order or established law, (iv) the Reply misinterprets Ingersoll's estoppel argument, and (v) GAIC admits it did not apply the proper 12(b)(6) standard and never intended to do so.

Ingersoll respectfully requests that in the event the Court allows GAIC to file the Reply, the Court also allows the filing of the attached Sur-Reply in further support of the Opposition and in further opposition to the Motion to Dismiss.

Respectfully submitted,

Dated: June 16, 2023

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